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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGELO FRANK MILLICAN,

Defendant and Appellant.

G041765

(Super. Ct. No. 08HF2107)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James S. Odriozola, Temporary Judge. (Pursuant to (Cal. Const., art. VI, § 21.) Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

An information charged Angelo Frank Millican with a November 5, 2008, theft of personal property valued at \$400 or more, a felony, and three misdemeanors; possession of burglary tools, resisting arrest, and possession of a switchblade knife. The court appointed the Public Defender to represent Millican, and with the advice of counsel, Millican pled not guilty to all charges and waived his right to a speedy preliminary hearing. The court set bail at \$25,000, but Millican did not post bond.

The matter was set for preliminary examination in November 2008. However, it was continued on that date, and then again in December. In early January 2009, Millican sent a three-page letter to the trial court. As he explained, the letter was a “notation [] sent directly to you [the court] to better ‘clarify,’ some detrimental *facts* in my case.” Millican requested the court dismiss all pending charges on the grounds that the arresting officers had violated his Fourth Amendment right to be free from unreasonable search and seizures, the court had denied his Eighth Amendment right to reasonable bail, and the state had violated his Fourteenth Amendment right to due process.

However, on January 22, Millican entered into a plea agreement with the district attorney. In exchange for pleading no contest to the felony grand theft charge, the district attorney agreed to dismiss the three misdemeanor charges and a grant of three-year probation. The *Tahl*¹ form reflects that Millican admitted that he “willfully and unlawfully took [and] carried away a phone . . . worth more than \$400 with intent to deprive the owner permanently of the property.” He completed the standard change of plea form, which includes an advisement of the constitutional rights waived upon the entry of a guilty or no contest plea. Nevertheless, Millican indicated on the form that he understood and wished to waive his constitutional rights to enter into the plea agreement, and he orally waived these rights when questioned by the court.

¹ (*Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.)

In accordance with this agreement, the court granted three-year supervised probation, imposed a sentence of 120 days in the county jail with 105 days credit for time served, and dismissed the misdemeanor counts.² In addition, Millican was ordered to pay a \$20 fine plus penalty assessment, a \$200 restitution fine, to submit to DNA testing, submit to any law enforcement officer's request to search his "residence, premises, container or vehicle" with or without probable cause, to not possess dangerous or deadly weapons, obey all orders, rules, regulations, and directives of the probation department and the court, cooperate with the probation department, pay the costs of probation, and report to the Probation Department within 72 hours of sentencing.

A separate document entitled "PROBATION ORDER," which appears to have been submitted to the court on the same date as the change of plea, indicates Millican was also ordered to pay a mandatory probation revocation restitution fine (Pen. Code, § 1202.44), to not ingest unauthorized controlled substances, to submit to drug testing, to seek training, schooling, or employment and maintain a residence approved by the probation department, to not associate with persons disapproved of by his probation officer, and to provide a copy of "Prohibited Persons Notice Form and Power of Attorney for Firearms and Disposal."

Millican filed a timely notice of appeal and request for certificate of probable cause. He checked several boxes on the standard notice of appeal form, including the "Other" box. His request for certificate of probable cause is a catalog of alleged errors made during the investigation of his case, his arrest and the subsequent search of his person and car, and to the legality of the plea proceedings. Millican asserted that he had suffered violations of the rights guaranteed to him by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, and he also made allegations of peace officer misconduct, gross negligence, "wreckless wonton [*sic*]

² Millican also signed a separate consent form, which waived his right to be sentenced by a judge instead of a commissioner.

conduct . . . seizures, levies or dispositions without process of authority,” and “deliberate indifference.”

On a second page, Millican argued that his case “must be dismissed” because of the multiple constitutional violations, his mistreatment at the hands of the arresting officer, and the fact that the prosecution never established the true value of the cell phone he stole. He also asserted that his attorney violated the attorney-client privilege by discussing his case with one of her fellow public defenders without his consent, and that his trial attorney should have filed a motion to suppress evidence.

The trial court denied Millican’s request for a certificate of probable cause. We appointed counsel to represent Millican on appeal. Counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel suggested we consider the issues mentioned in Millican’s notice of appeal and one new potential issue, which counsel characterized as follows: “Whether, due to the fact that the court did not verbally impose the additional probation conditions after appellant pled guilty, appellant was deprived of the right to notice that the new conditions would be imposed and denied the opportunity to respond and object to the additional limitations on his daily life so that the conditions not specifically ordered should be stricken? [Citations.]”

Millican was given 30 days to file written arguments in his own behalf. He did not timely submit a supplemental brief on his own behalf. However, after the 30-day time period had expired, Millican submitted a letter to this court, which we stamped received but did not file, requesting that his appellate attorney be relieved and another appointed, and a document entitled “supplemental brief,” which was also stamped received.

We have examined the entire appellate record, Millican’s letter to the trial court and the notice of appeal, and appellate counsel’s *Wende/Anders* brief, and find no

arguably meritorious issues. (*Wende, supra*, 25 Cal.3d 436.) The record establishes that Millican's plea fully complies with the requirements of *In re Tahl, supra*, 1 Cal.3d 122, and *Boykin v. Alabama, supra*, 395 U.S. 238. To the extent his request for a certificate of probable cause challenges the validity of the plea, the court's denial of his request precludes appellate review. (§ 1237.5; *People v. Panizzon* (1996) 13 Cal.4th 68, 74-76.) The record is insufficient to establish ineffective assistance of counsel, a claim more appropriately raised in a habeas corpus proceeding. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) With respect to the various terms and conditions of probation imposed, we find nothing improper in the court's probationary grant, nor do any of the terms and conditions appear unreasonable or unrelated to the offense for which Millican now stands convicted. (§ 1203; *People v. Welch* (1993) 5 Cal.4th 228, 233-234.) We therefore affirm the judgment.

SILLS, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.